

105TH CONGRESS
2D SESSION

S. 2546

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2, 1998

Mr. HATCH (for himself, Mr. DODD, Mr. ASHCROFT, Mr. LIEBERMAN, Mr. SESSIONS, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fairness in Asbestos Compensation Act of 1998”.

6 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Definitions.

TITLE I—ASBESTOS RESOLUTION CORPORATION

- Sec. 101. Establishment.
- Sec. 102. Powers of the Corporation.
- Sec. 103. Board of Directors.
- Sec. 104. Officers.
- Sec. 105. Medical Advisory Board.
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- Sec. 201. Medical criteria—nonmalignant conditions.
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- Sec. 301. Rules of procedure.
- Sec. 302. Motions officers.
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- Sec. 305. Grace period.
- Sec. 306. Mediation.
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TITLE IV—CIVIL ACTIONS

- Sec. 401. Prerequisites for civil action.
- Sec. 402. Individual trials.
- Sec. 403. Certificate of medical eligibility presumed correct.
- Sec. 404. Penalty for inadequate offer in mediation.

TITLE V—RULES APPLICABLE TO ARBITRATIONS AND CIVIL ACTIONS

- Sec. 501. Elements of proof; relief.
- Sec. 502. Timeliness defenses abolished.
- Sec. 503. Attorneys' fees.
- Sec. 504. Effect on subsequent actions.

TITLE VI—FUNDING

- Sec. 601. Costs of medical review and overhead and administration.
- Sec. 602. Cost of mediation and arbitration.
- Sec. 603. Informal dispute resolution.
- Sec. 604. Judicial review; enforcement.
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TITLE VII—APPLICABILITY; PENDING CIVIL ACTIONS

Sec. 701. Applicability.
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TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Applicability of other Federal laws.
 Sec. 802. Obligations of the Corporation not obligations of the United States.
 Sec. 803. Application to existing asbestos trusts.
 Sec. 804. Severability.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Asbestos personal injury litigation is unfair
 4 and inefficient, and imposes a crushing burden on
 5 litigants and taxpayers alike.

6 (2) Asbestos litigation has already led to the
 7 bankruptcy of more than 15 companies, representing
 8 the great majority of the former asbestos industry.

9 (3) The extraordinary volume of asbestos litiga-
 10 tion is straining Federal and State courts at enor-
 11 mous taxpayer expense, with more than 150,000
 12 such lawsuits currently pending in the tort system
 13 and tens of thousands of new cases filed every year.

14 (4) Asbestos litigation has resulted in arbitrary
 15 verdicts, with individuals receiving widely varying re-
 16 coveries despite similar medical conditions.

17 (5) Asbestos litigation is a mature tort. The
 18 legal, medical, and scientific issues have been repeat-
 19 edly tried and retried in the courts for many years.

20 (6) Currently, statutes of limitations can force
 21 claimants to bring premature lawsuits in order to

1 avoid losing their claim for compensation. Moreover,
2 in order to obtain compensation for nonmalignant
3 disease, claimants often must give up their right to
4 obtain compensation later on, if they develop an as-
5 bestos-related cancer.

6 (7) Litigation has not been able to provide com-
7 pensation to claimants swiftly. On the contrary, ac-
8 cording to the Ad Hoc Committee on Asbestos Liti-
9 gation of the United States Judicial Conference, the
10 volume and complexity of asbestos cases have re-
11 sulted in the violation of a basic tenet of American
12 justice; which is the speedy and inexpensive resolu-
13 tion of cases.

14 (8) Litigation has also proved to be an extraor-
15 dinarly costly means of resolving claims of asbestos-
16 related disease. Less than 50 percent of the total
17 cost of asbestos litigation actually goes to com-
18 pensate claimants, while the remainder is eaten up
19 in attorneys' fees and other litigation costs.

20 (9) In many courts, the vast majority of pend-
21 ing asbestos claims are filed by individuals who suf-
22 fer no present asbestos-related impairment. These
23 claims divert the resources of defendants from com-
24 pensating individuals who are suffering from serious
25 asbestos-related disease.

1 (10) Punitive damages also divert the resources
 2 of defendants from compensating impaired claim-
 3 ants. Moreover, punitive damages give a few claim-
 4 ants huge windfalls in addition to compensatory
 5 damages.

6 (11) In an effort to cope with the overwhelming
 7 tide of asbestos cases, a few courts have resorted to
 8 mass consolidated trials and other aggregative meth-
 9 ods of dealing with asbestos claims. Unfortunately,
 10 mass consolidations only serve to magnify the irra-
 11 tionality of a litigation system that awards massive
 12 amounts to the unimpaired, while threatening the
 13 ability of seriously ill people to obtain compensation
 14 in the future.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) ALTERNATIVE DISPUTE RESOLUTION PROC-
 18 ESS.—The term “alternative dispute resolution proc-
 19 ess” means the mediation and voluntary arbitration
 20 process established under title III of this Act.

21 (2) ASBESTOS.—The term “asbestos” means
 22 any number of naturally occurring silicates with the
 23 common properties of great resistance to destruction
 24 by physical or chemical means and a fibrous configu-
 25 ration, including asbestiform varieties of chrysotile,

crocidolite, amosite, anthophyllite, tremolite, or actinolite.

(3) ASBESTOS CLAIM.—The term “asbestos claim” means any claim for damages or other relief, arising out of, based on, or related to the health effects of exposure to asbestos, including any claim for personal injury, death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance, and including any claim made by or on behalf of any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(4) ASBESTOS TRUST.—The term “asbestos trust” means a court-supervised trust established to resolve asbestos claims arising directly or indirectly from exposure to asbestos or asbestos-containing products, including a trust created pursuant to the bankruptcy laws of the United States or rule 23 of the Federal Rules of Civil Procedure.

(5) BASILAR CRACKLES.—The term “basilar crackles”, sometimes called “rales”, means those sounds described in American Thoracic Society, “The Diagnosis of Nonmalignant Diseases Related to Asbestos”, 134 American Review of Respiratory Disease, 363, 366 (1986).

1 (6) BOARD.—The term “Board” means the
2 Board of Directors of the Asbestos Resolution Cor-
3 poration.

4 (7) BOARD-CERTIFIED INTERNIST.—The term
5 “Board-certified internist” means a physician who is
6 currently certified by the American Board of Inter-
7 nal Medicine in internal medicine.

8 (8) BOARD-CERTIFIED ONCOLOGIST.—The term
9 “Board-certified oncologist” means a physician who
10 is currently certified by the American Board of In-
11 ternal Medicine in the subspecialty of medical oncol-
12 ogy.

13 (9) BOARD-CERTIFIED PATHOLOGIST.—The
14 term “Board-certified pathologist” means a physi-
15 cian who currently holds primary certification in
16 anatomic pathology, or combined anatomic and clinical
17 pathology, from the American Board of Pathol-
18 ogy.

19 (10) BOARD-CERTIFIED PULMONARY SPECIAL-
20 IST.—The term “Board-certified pulmonary special-
21 ist” means a physician who is currently certified by
22 the American Board of Internal Medicine in the sub-
23 specialty of pulmonary disease.

24 (11) BOARD-CERTIFIED RADIOLOGIST.—The
25 term “Board-certified radiologist” means a physician

1 who is currently certified by the American Board of
2 Radiology.

3 (12) BYLAWS.—The term “bylaws” means the
4 code or codes of rules adopted for the regulation or
5 management of the affairs of the Corporation. By-
6 laws shall be consistent with the requirements of this
7 Act and, to the extent consistent with this Act, with
8 the requirements of the District of Columbia Non-
9 profit Corporation Act (D.C. Code section 29–501 et
10 seq.).

11 (13) CANCER.—The term “cancer” means any
12 of the various malignant neoplasms marked by the
13 proliferation of anaplastic cells that tend to invade
14 surrounding tissue and metastasize to new body
15 sites and the pathological condition characterized by
16 such growths.

17 (14) CERTIFICATE OF MEDICAL ELIGIBILITY.—
18 The term “certificate of medical eligibility” means a
19 certificate issued by the Corporation to a claimant
20 pursuant to this Act certifying that an exposed per-
21 son meets the requirements of 1 or more eligible
22 medical categories (or qualifies as an exceptional
23 medical claim with respect to an eligible medical cat-
24 egory).

1 (15) CERTIFIED B-READER.—The term “cer-
 2 tified B-reader” means an individual qualified as a
 3 “final” or “B-reader” under section 37.51(b) of title
 4 42, Code of Federal Regulations (and any subse-
 5 quent revisions thereof) whose certification is cur-
 6 rent.

7 (16) CHEST X-RAYS.—The term “chest x-rays”
 8 means chest radiographs taken in 4 views (Pos-
 9 terior-Anterior, Lateral, and Left and Right Ob-
 10 liques) and graded quality 1 for reading according to
 11 the criteria established by the ILO; except that, in
 12 situations where the claimant is unable to provide
 13 quality 1 chest x-rays because of death or because
 14 of an inability to have new chest x-rays taken, chest
 15 x-rays graded quality 2 will be acceptable.

16 (17) CIVIL ACTION.—The term “civil action”
 17 means any action, lawsuit, or proceeding in any Fed-
 18 eral, State, or tribal court, but does not include—

19 (A) a criminal action;

20 (B) an action relating to Federal or State
 21 worker’s compensation laws; or

22 (C) a proceeding for judicial review of the
 23 actions of the Corporation.

24 (18) CLAIMANT.—The term “claimant” means
 25 any exposed person or the legal representative of

1 that exposed person, and any parent, child, or other
 2 relative of an exposed person, or the legal represent-
 3 ative of that exposed person, who applies to the Cor-
 4 poration for a certificate of medical eligibility or who
 5 invokes the alternative dispute resolution services of-
 6 fered by the Corporation.

7 (19) CLINICAL EVIDENCE OF ASBESTOSIS.—

8 The term “clinical evidence of asbestosis” means a
 9 diagnosis of pulmonary asbestosis by a Board-cer-
 10 tified internist or Board-certified pulmonary special-
 11 ist based on the following minimum objective cri-
 12 teria:

13 (A) Chest x-rays which, in the opinion of
 14 a certified B-reader, show small irregular opac-
 15 ities of ILO grade 1/0 and pulmonary function
 16 testing and physical examination that show ei-
 17 ther—

18 (i) FVC <80 percent of predicted
 19 value with FEV₁/FVC ≥75 percent (actual
 20 value); or

21 (ii) TLC <80 percent of predicted
 22 value, with either DLCO ≤76 percent of
 23 predicted value or bilateral basilar crack-
 24 les, and also the absence of any probable
 25 explanation for this DLCO result or crack-

1 les finding other than the presence of lung
2 disease.

3 (B) Chest x-rays which, in the opinion of
4 a certified B-reader, show small irregular opac-
5 ities of ILO grade 1/1 or greater; and pul-
6 monary function testing that shows either—

7 (i) $FVC < 80$ percent of predicted
8 value with $FEV_1/FVC \geq 72$ percent (actual
9 value) or, if the individual tested is at least
10 68 years old at the time of the testing,
11 with $FEV_1/FVC \geq 65$ percent (actual value);
12 or

13 (ii) $TLC < 80$ percent of predicted
14 value.

15 (20) COMPENSATORY DAMAGES.—The term
16 “compensatory damages” means damages awarded
17 for economic and noneconomic loss.

18 (21) CORPORATION.—The term “Corporation”
19 means the Asbestos Resolution Corporation estab-
20 lished in section 101.

21 (22) DEFENDANT.—The term “defendant”
22 means any party in a civil action that is alleged to
23 be legally responsible for the claimant’s injury.

24 (23) DLCO.—The term “DLCO” means diffus-
25 ing capacity of the lung (carbon monoxide), which is

1 a measure of the volume of carbon monoxide trans-
 2 ferred from the alveoli to blood in the pulmonary
 3 capillaries for each unit of driving pressure of the
 4 carbon monoxide.

5 (24) ECONOMIC LOSS.—The term “economic
 6 loss” means any pecuniary loss resulting from harm
 7 (including the loss of earnings or other benefits re-
 8 lated to employment, medical expense loss, replace-
 9 ment service loss, loss due to death, burial costs, and
 10 loss of business or employment opportunities) to the
 11 extent that recovery for such loss is allowed under
 12 applicable law.

13 (25) ELIGIBLE MEDICAL CATEGORY.—The term
 14 “eligible medical category” means mesothelioma,
 15 lung cancer, other cancer, and nonmalignant condi-
 16 tions.

17 (26) EVIDENCE OF BILATERAL PLEURAL
 18 THICKENING WITH IMPAIRMENT.—The term “evi-
 19 dence of bilateral pleural thickening with impair-
 20 ment” means a diagnosis of bilateral pleural thick-
 21 ening with impairment by a Board-certified internist
 22 or Board-certified pulmonary specialist based on the
 23 following minimum objective criteria:

24 (A) Chest x-rays which, in the opinion of
 25 a certified B-reader, show bilateral pleural

1 thickening of ILO Grade B2, and which in-
 2 cludes blunting of at least 1 costophrenic angle
 3 and is not explained by any other condition in
 4 the subject's history; and pulmonary function
 5 testing that shows—

6 (i) if TLC is available, $TLC < 75$ per-
 7 cent of predicted value; or

8 (ii) if TLC is not available, VC or
 9 $FVC < 75$ percent of predicted value with
 10 $FEV_1/FVC \geq 75$ percent (actual value); and
 11 in either case

12 (iii) a statement by the Board-cer-
 13 tified internist or Board-certified pul-
 14 monary specialist that the asbestos-related
 15 changes are a substantial contributing fac-
 16 tor in causing the pulmonary function
 17 changes.

18 (B) Chest x-rays which, in the opinion of
 19 a certified B-reader, show bilateral pleural
 20 thickening of ILO grade C2 or greater, and
 21 which includes the blunting of at least 1
 22 costophrenic angle and is not explained by any
 23 other condition in the subject's history; and pul-
 24 monary function testing that shows—

1 (i) FVC<80 percent of predicted
 2 value with FEV₁/FVC≥75 percent (actual
 3 value), or, if the individual tested is at
 4 least 68 years old at the time of the test-
 5 ing, with FEV₁/FVC ≥65 percent (actual
 6 value); or

7 (ii) TLC <80 percent of predicted
 8 value; and in either case

9 (iii) a statement by the Board-cer-
 10 tified internist or Board-certified pul-
 11 monary specialist that the asbestos-related
 12 changes are a substantial contributing fac-
 13 tor in causing the pulmonary function
 14 changes.

15 (27) EXCEPTIONAL MEDICAL CLAIM.—The term
 16 “exceptional medical claim” means a claim identified
 17 as such pursuant to the procedures in section 206.

18 (28) EXPOSED PERSON.—The term “exposed
 19 person” means any person who has been exposed in
 20 any State (or while working aboard a United States
 21 vessel outside the United States) to asbestos or to
 22 asbestos-containing products.

23 (29) FEV₁.—The term “FEV₁” means forced
 24 expiratory volume (1 second), which is the maximal
 25 volume of air expelled in 1 second during perform-

1 ance of the spirometric test for forced vital capacity
2 (FVC). FEV₁ shall be measured using standard spi-
3 rometric methods.

4 (30) FINAL CERTIFICATE OF ELIGIBILITY.—
5 The term “final certificate of eligibility” means a
6 certificate of eligibility that is not subject to further
7 review or modification by the Corporation, whether
8 on reconsideration under section 205 by action of an
9 exceptional medical claims panel under section 206.

10 (31) FVC.—The term “FVC” means forced
11 vital capacity, which is the maximal volume of air
12 expired with a maximally forced effort from a posi-
13 tion of maximal inspiration. FVC shall be measured
14 using standard spirometric methods.

15 (32) GOOD FAITH OFFER OR GOOD FAITH DE-
16 MAND.—The terms “good faith offer” or “good faith
17 demand” means a settlement offer or demand which
18 reflects an evaluation of relevant factors of tradi-
19 tional tort principles of damages.

20 (33) GRACE PERIOD.—The term “grace period”
21 means the period allowed for voluntary settlements
22 in section 305.

23 (34) ILO.—The term “ILO” means the Inter-
24 national Labour Office.

1 (35) ILO GRADE.—The term “ILO grade”
2 means the radiological ratings for the presence of
3 lung changes by chest x-rays as established from
4 time to time by the ILO.

5 (36) LATENCY PERIOD.—The term “latency pe-
6 riod” means the period from the date of the exposed
7 person’s first significant exposure to asbestos or an
8 asbestos-containing product to the date of mani-
9 festation of the condition claimed.

10 (37) MANIFESTATION.—The term “manifesta-
11 tion” means either the date of the actual diagnosis
12 of the condition claimed, or the date upon which the
13 clinical records and available tests indicate that the
14 condition could reasonably have been diagnosed by a
15 competent physician.

16 (38) MEDICAL ADVISORY BOARD.—The term
17 “medical advisory board” means the board estab-
18 lished under section 105 to provide medical advice to
19 the board of directors of the Corporation.

20 (39) MESOTHELIOMA.—The term “mesotheli-
21 oma” means a malignant tumor of the mesothelial
22 tissue.

23 (40) MOTIONS OFFICER.—The term “motions
24 officer” means an official of the Corporation respon-
25 sible for resolving procedural and discovery disputes

1 during the alternative dispute resolution process in
2 the absence of an arbitrator. Motions officers shall
3 be members in good standing of the bar of a State.

4 (41) NONECONOMIC LOSS.—The term “non-
5 economic loss” means subjective, nonmonetary loss
6 resulting from harm, including pain, suffering, in-
7 convenience, mental suffering, emotional distress,
8 loss of society and companionship, loss of consor-
9 tium, injury to reputation, and humiliation.

10 (42) OSHA.—The term “OSHA” means the
11 Occupational Safety and Health Administration of
12 the Department of Labor.

13 (43) OCCUPATIONAL HISTORY.—The term “oc-
14 cupational history” means a listing of all employ-
15 ment positions, providing for the dates and place of
16 employment, the employer, and a description of job
17 responsibilities and activities.

18 (44) OPERATIONAL DATE.—The term “oper-
19 ational date” means the date on which the Board
20 certifies that the Corporation is operational.

21 (45) PATHOLOGICAL EVIDENCE OF ASBESTO-
22 SIS.—The term “pathological evidence of asbestosis”
23 means diagnosis of pulmonary asbestosis by a
24 Board-certified pathologist based on a finding that
25 more than 1 representative section of lung tissue

1 otherwise uninvolved with any other process (e.g.,
2 cancer or emphysema) demonstrates a pattern of
3 peribronchiolar or parenchymal scarring in the pres-
4 ence of characteristic asbestos bodies, and also that
5 there is no other more likely explanation for the
6 presence of the fibrosis.

7 (46) PERSON.—The term “person” means an
8 individual, trust, firm, corporation, association, part-
9 nership, joint venture, the United States, and any
10 State or political subdivisions thereof. The term does
11 not include an asbestos trust in existence as of the
12 date of enactment unless the trust elects to be cov-
13 ered by this Act under section 803.

14 (47) PHYSICIAN.—The term “physician” means
15 a medical doctor currently licensed to practice medi-
16 cine in any State who has not, within the 5-year pe-
17 riod prior to the date of enactment of the Act, spent
18 more than $\frac{1}{2}$ of that individual’s professional time,
19 or derived more than $\frac{1}{2}$ of that individual’s profes-
20 sional income, either annually or in total, either re-
21 viewing or testifying in any forum on medical-legal
22 issues related to asbestos.

23 (48) PREDICTED VALUE.—The term “predicted
24 value” for spirometry and lung volumes shall be the
25 relevant value published by Morris, Clinical Pul-

1 monary Function Testing, 2d Edition, Inter-
 2 mountain Thoracic Society (1984). “Predicted
 3 Value” for diffusing capacity shall be the relevant
 4 value published by Miller, et al., “Single Breath Dif-
 5 fusing Capacity in a Representative Sample of the
 6 Population of Michigan, a Large Industrial State”,
 7 127 American Review of Respiratory Disease, 270–
 8 77 (1983). Predicted value in all pulmonary function
 9 tests shall be corrected for race, ethnic origin, and
 10 other relevant factors.

11 (49) PULMONARY FUNCTION TESTING.—The
 12 term “pulmonary function testing” means
 13 spirometry, lung volume, and diffusing capacity
 14 (“DLCO”) testing. All spirometry shall use standard
 15 spirometric methods. Pulmonary function testing
 16 other than spirometry shall use methods, quality cri-
 17 teria, and standards approved by the Board, upon
 18 the recommendation of the Medical Advisory Board.
 19 Such methods, quality criteria, and standards shall
 20 be generally recognized by authoritative professional
 21 bodies as appropriate, giving due consideration to
 22 the reliability where obstructive lung disease may be
 23 present. All backup data (including flow volume
 24 loops, spirographs, and other tracings), necessary to
 25 ensure compliance with the methods, quality criteria,

1 and standards approved by the Board shall be sub-
2 mitted to the Corporation along with the results of
3 such tests.

4 (50) PUNITIVE DAMAGES.—The term “punitive
5 damages” means damages awarded against any per-
6 son to punish or deter such person, or others, from
7 engaging in similar behavior in the future.

8 (51) RESPONDENT.—The term “respondent”
9 means any person who is or may be responsible for
10 a claimant’s asbestos-related condition and who is so
11 notified by the Corporation under section 303 or
12 304. The term does not include an asbestos trust in
13 existence as of the date of enactment of this Act un-
14 less the trust elects to be covered by this Act under
15 section 803.

16 (52) STANDARD SPIROMETRIC METHODS.—The
17 term “standard spirometric methods” means spiro-
18 metric methods and equipment that substantially
19 conform to American Thoracic Society standards for
20 technical quality and instrumentation, as set forth in
21 section 718.103 of title 20, Code of Federal Regula-
22 tions, and appendix B thereto or in guidelines estab-
23 lished by the American Thoracic Society, as set forth
24 in “Standardization of Spirometry—1994 Update”,
25 152 American Review of Respiratory Disease 1107–

1 36 (1995) and any revisions thereof. Each subject
2 must be tested with and without inhaled broncho-
3 dilators, with best values taken. All backup data per-
4 taining to spirometric testing of an exposed person
5 (including all flow volume loops, spirographs, and
6 any other tracings) shall be submitted to the Cor-
7 poration to ensure that these quality criteria and
8 standards have been satisfied.

9 (53) STATE.—The term “State” means any
10 State of the United States, the District of Columbia,
11 Commonwealth of Puerto Rico, the Northern Mari-
12 ana Islands, the Virgin Islands, Guam, American
13 Samoa, and any other territory or possession of the
14 United States or any political subdivision of any of
15 the foregoing.

16 (54) TLC.—The term “TLC” means total lung
17 capacity, which is the volume of air in the lung after
18 maximal inspiration.

19 (55) WORKERS’ COMPENSATION LAW.—The
20 term “workers compensation law” means a law re-
21 specting a program administered by a State or the
22 United States to provide benefits, funded by a re-
23 sponsible employer or its insurance carrier, for occu-
24 pational diseases or injuries or for disability or death
25 caused by occupational diseases or injuries. The

1 term includes the Longshore and Harbor Workers'
2 Compensation Act (33 U.S.C. 901 through 944, and
3 948 through 950), but does not include the Federal
4 Employers' Liability Act (45 U.S.C. 51 et seq.).

5 **TITLE I—ASBESTOS**
6 **RESOLUTION CORPORATION**

7 **SEC. 101. ESTABLISHMENT.**

8 There is established a corporation, to be known as
9 the “Asbestos Resolution Corporation”.

10 **SEC. 102. POWERS OF THE CORPORATION.**

11 The Corporation shall have the power to—

12 (1) hire or appoint employees and to retain the
13 services of other entities to provide such employees;

14 (2) contract for services, including the services
15 of physicians and other medical professionals, hear-
16 ing examiners, mediators, arbitrators, financial ex-
17 perts or consultants, accountants, and attorneys;

18 (3) receive voluntary contributions of funds,
19 goods, and services in order to carry out its pur-
20 poses;

21 (4) appoint 1 or more exceptional medical
22 claims panels, as described in section 206(a);

23 (5) adopt rules, policies, and procedures govern-
24 ing recovery of costs from and allocation of costs to
25 defendants and respondents;

1 (6) adopt rules, policies, and procedures for the
2 fair and efficient conduct of medical review and al-
3 ternative dispute resolution;

4 (7) conduct audits of information submitted to
5 it, including inspection of laboratories performing
6 medical tests and verification of quality assurance
7 and quality control procedures; and

8 (8) sue and be sued in its corporate name.

9 **SEC. 103. BOARD OF DIRECTORS.**

10 (a) MEMBERSHIP.—

11 (1) IN GENERAL.—The Corporation shall be
12 managed by a Board of Directors consisting of 7
13 members appointed by the President, by and with
14 the advice and consent of the Senate.

15 (2) CHAIRPERSON.—The President shall des-
16 ignate the chairperson of the Board.

17 (3) LIMITATION.—Not more than 4 directors
18 may be members of the same political party.

19 (4) MEMBERSHIP REQUIREMENT.—The direc-
20 tors shall be distinguished private citizens of the
21 United States.

22 (5) NOMINATIONS.—The President shall submit
23 7 nominations under this section to the Senate not
24 later than 4 months after the date of the enactment
25 of this Act.

1 (b) TERMS.—

2 (1) IN GENERAL.—Each director shall be ap-
 3 pointed for a term of 6 years beginning on the date
 4 of expiration of the term of the predecessor of that
 5 director, except that, of the directors first ap-
 6 pointed—

7 (A) 3 shall be appointed for a term of 3
 8 years,

9 (B) 3 shall be appointed for a term of 6
 10 years, and

11 (C) the chairperson shall be appointed for
 12 a term of 6 years.

13 (2) PERIOD OF TERMS.—The terms of office of
 14 the directors first appointed shall begin on the date
 15 of enactment. A director may continue to serve until
 16 his successor has been appointed and confirmed.

17 (c) VACANCY.—A vacancy on the Board shall be filled
 18 in the same manner as the original appointment. A direc-
 19 tor appointed to fill a vacancy occurring before the expira-
 20 tion of the term for which the predecessor of that director
 21 was appointed shall be appointed for the remainder of that
 22 term. A vacancy shall not affect the power of the Board.

23 (d) REMOVAL.—Directors may be removed for cause
 24 by the President.

25 (e) COMPENSATION; EXPENSES.—

1 (1) The compensation of directors other than
2 the chairperson shall not exceed \$50,000 per year,
3 and the compensation of the chairperson shall not
4 exceed \$75,000 per year.

5 (2) Directors may be reimbursed of reasonable
6 travel and other expenses incurred in connection
7 with their services to the Corporation pursuant to
8 policies adopted by the Board.

9 (f) PERSONAL LIABILITY OF DIRECTORS.—A direc-
10 tor shall not be personally liable for any act or omission
11 within the scope of the director's service as a member of
12 the Board. The liability of a director shall not be limited
13 as provided in this subsection if the director engaged in
14 willful misconduct or a knowing violation of the criminal
15 law.

16 (g) AUDIT COMMITTEE.—The Board shall establish
17 an Audit Committee, which shall conduct an annual audit
18 of the finances of the Corporation and provide an annual
19 report to the Board regarding the financial condition of
20 the Corporation.

21 (h) EXCLUSIVE AUTHORITY.—The Board shall have
22 the exclusive authority to—

23 (1) adopt rules, consistent with this Act, re-
24 garding the assessment and recovery of costs, the
25 qualifications of physicians, the organization and op-

1 eration of the Medical Advisory Board, and the con-
 2 duct of the alternative dispute resolution process;

3 (2) adopt guidelines, upon the recommendation
 4 of the Medical Advisory Board, for implementing the
 5 provisions of this Act regarding exceptional medical
 6 cases;

7 (3) recommend the inclusion of new diseases in
 8 the eligible medical category known as “other can-
 9 cer” if the Board finds, upon the recommendation of
 10 the Medical Advisory Board and at a meeting ex-
 11 pressly called for that purpose, that there is a medi-
 12 cal consensus that the disease is caused by exposure
 13 to asbestos; and

14 (4) adopt and amend bylaws.

15 **SEC. 104. OFFICERS.**

16 The Corporation shall have a chief executive officer
 17 and such other officers as may be named and appointed
 18 by the Board at rates of compensation and terms of serv-
 19 ice fixed by the Board. Officers of the Corporation may
 20 not simultaneously serve on the Board.

21 **SEC. 105. MEDICAL ADVISORY BOARD.**

22 (a) IN GENERAL.—The Board shall appoint a Medi-
 23 cal Advisory Board to provide advice on medical matters,
 24 including—

1 (1) retention, supervision, and removal of physi-
 2 cians; establishment of guidelines regarding excep-
 3 tional medical claims;

4 (2) the appropriateness of adding new diseases
 5 to the “other cancer” eligible medical category des-
 6 ignated as “other cancer”; and

7 (3) such other medical matters as may be re-
 8 ferred to the Medical Advisory Board by the Board.

9 (b) COMPOSITION; RULES AND POLICIES.—

10 (1) NUMBER OF MEMBERS.—The Medical Advi-
 11 sory Board shall have no fewer than 5 or more than
 12 9 members.

13 (2) QUALIFICATIONS.—Members of the Medical
 14 Advisory Board shall be physicians with a dem-
 15 onstrated expertise in asbestos-related conditions.
 16 The Medical Advisory Board shall include at least 1
 17 of each of the following:

18 (A) A Board-certified pulmonary specialist.

19 (B) A Board-certified radiologist.

20 (C) A Board-certified oncologist.

21 (D) A Board-certified pathologist.

22 (3) RULES AND POLICIES.—The Board shall
 23 adopt such rules and policies regarding the composi-
 24 tion and operation of the Medical Advisory Board as

1 may be necessary for its efficient operation, includ-
 2 ing rules governing—

3 (A) the appointment and removal of mem-
 4 bers;

5 (B) terms of office;

6 (C) the filling of vacancies;

7 (D) notice and conduct of meetings (in-
 8 cluding quorum requirements); and

9 (E) compensation.

10 (c) **APPLICABILITY OF FEDERAL ADVISORY COMMIT-**
 11 **TEE ACT.**—The Medical Advisory Board shall be subject
 12 to the Federal Advisory Committee Act (5 U.S.C. App.).

13 **SEC. 106. AVOIDANCE OF CONFLICT OF INTEREST.**

14 (a) **IN GENERAL.**—No director, officer, member of
 15 the Medical Advisory Board, employee, contract employee,
 16 contractor, or consultant to the Corporation may rep-
 17 resent any person in any manner in any proceeding before
 18 the Corporation.

19 (b) **POLICIES AND PROCEDURES.**—In addition, the
 20 Board shall adopt policies and procedures to guard against
 21 both actual and apparent conflicts of interest.

22 **SEC. 107. ANNUAL REPORTS.**

23 The Corporation shall submit an annual report to the
 24 President and the Committee on the Judiciary of the Sen-
 25 ate and the Committee on the Judiciary of the House of

1 Representatives with respect to the operations, activities,
 2 and financial condition of the Corporation on or before
 3 December 31 of each year.

4 **TITLE II—MEDICAL ELIGIBILITY** 5 **DETERMINATIONS**

6 **SEC. 201. MEDICAL CRITERIA—NONMALIGNANT CONDI-** 7 **TIONS.**

8 In order to meet the requirements for the nonmalig-
 9 nant conditions eligible medical category, a claimant shall
 10 be required to submit medical information or testimonial
 11 information sufficient to demonstrate—

- 12 (1) a latency period of at least 12 years; and
- 13 (2)(A) clinical evidence of asbestosis;
- 14 (B) pathological evidence of asbestosis; or
- 15 (C) evidence of bilateral pleural thickening with
- 16 impairment.

17 **SEC. 202. MEDICAL CRITERIA—MESOTHELIOMA.**

18 In order to meet the requirements for the mesotheli-
 19 oma eligible medical category, a claimant shall be required
 20 to submit—

- 21 (1) a diagnosis of malignant mesothelioma with
- 22 a primary site in the pleura or peritoneum, that—
- 23 (A) is derived from appropriate tissue, and
- 24 verified using standardized and accepted cri-

teria of microscopic morphology or a variety of appropriate staining techniques; and

(B) is made by either—

(i) 2 Board-certified pathologists; and

(ii) 1 Board-certified pathologist who is, at the time that the diagnosis is verified, a member of the United States-Canadian Mesothelioma Reference Panel; and

(2) medical information or testimonial information sufficient to demonstrate a latency period of at least 10 years.

SEC. 203. MEDICAL CRITERIA—LUNG CANCER.

(a) IN GENERAL.—In order to meet the requirements for the lung cancer eligible medical category, a claimant shall be required to submit—

(1) a diagnosis by a Board-certified pathologist, Board-certified pulmonary specialist, or Board-certified oncologist of primary lung carcinoma;

(2) medical information or testimonial information sufficient to demonstrate a latency period of at least 12; and

(3) either—

(A) evidence of a nonmalignant condition sufficient to meet the requirements of section 201; or

1 (B) chest x-rays that, in the opinion of a
2 certified B-reader, demonstrate both asbestos-
3 related bilateral pleural plaques or asbestos-re-
4 lated bilateral pleural thickening and evidence
5 of 15 years of exposure to asbestos, to be cal-
6 culated as specified in subsection (b), in accord-
7 ance with paragraphs (1) through (4) of that
8 subsection.

9 (b) CALCULATIONS.—The calculations made under
10 subsection (a) shall be based on the following:

11 (1) Each year that an exposed person's primary
12 occupation, during a substantial portion of a normal
13 work year for that occupation, involved working in
14 areas immediate to where asbestos-containing prod-
15 ucts were being installed, repaired, or removed under
16 circumstances that involved regular airborne emis-
17 sions of visible asbestos dust, shall count as 1 year.

18 (2) Each year that an exposed person's primary
19 occupation, during a substantial portion of a normal
20 work year for that occupation, involved the direct in-
21 stallation, repair, or removal of asbestos-containing
22 products, shall count as 2 years.

23 (3) Each year that an exposed person's primary
24 occupation, during a substantial portion of a normal
25 work year for that occupation, involved the direct

1 manufacture of asbestos-containing products using
2 raw asbestos fiber, or the direct installation, repair,
3 or removal of asbestos-containing products in a ship-
4 yard during World War II, shall count as 4 years.

5 (4)(A) Except as provided in subparagraph (B),
6 for purposes of calculating years of exposure under
7 this subsection—

8 (i) each year of exposure prior to 1976
9 shall be counted fully;

10 (ii) each year of exposure from 1976
11 through 1979 shall be counted $\frac{1}{2}$; and

12 (iii) exposures after 1979 shall not be
13 counted.

14 (B)(i) For each year from 1972 through 1975,
15 for which it is demonstrated by a preponderance of
16 the evidence that the exposed person's exposure to
17 asbestos in the occupation of that person was, dur-
18 ing a substantial portion of that work year, in com-
19 pliance with the OSHA 8-hour time-weighted aver-
20 age airborne concentration for asbestos exposure at
21 that time, that year shall count $\frac{1}{2}$ for purposes of
22 calculating the years of exposure for purposes of this
23 subsection.

24 (ii) For each year from 1976 through 1979 for
25 which a claimant demonstrates, by a preponderance

1 of the evidence, that the exposed person's exposure
2 to asbestos in the occupation of that person was,
3 during a substantial portion of that work year, in
4 excess of the OSHA 8-hour time-weighted average
5 airborne concentration for asbestos exposure at that
6 time, that year shall count fully for purposes of cal-
7 culating the years of exposure for purposes of this
8 subsection.

9 (iii) For each year after 1979 for which a
10 claimant demonstrates, by a preponderance of the
11 evidence, that the exposed person's exposure to as-
12 bestos in the occupation of that person was, during
13 a substantial portion of that work year, in excess of
14 the OSHA 8-hour time-weighted average airborne
15 concentration for asbestos exposure at that time,
16 that year shall count $\frac{1}{2}$ for purposes of calculating
17 years of exposure for purposes of this subsection.

18 **SEC. 204. MEDICAL CRITERIA—OTHER CANCER.**

19 In order to meet the requirements in the other cancer
20 medical eligible category, a claimant shall be required to
21 submit—

22 (1) a diagnosis by a Board-certified pathologist,
23 Board-certified pulmonary specialist, or Board-cer-
24 tified oncologist (as appropriate for the type of can-

1 cer claimed) of primary cancer of the colon or rec-
2 tum, larynx, esophagus, or stomach;

3 (2) medical or testimonial information sufficient
4 to demonstrate a latency period of at least 12 years;
5 and

6 (3) evidence of a nonmalignant condition suffi-
7 cient to meet the requirements of section 201.

8 **SEC. 205. PROCEDURE FOR CERTIFICATE OF ELIGIBILITY.**

9 (a) APPLICATION.—A claimant may apply for a cer-
10 tificate of medical eligibility by submitting to the Corpora-
11 tion such information as the Corporation may require in
12 a form designated by the Corporation, that includes a
13 statement that the claimant is not required to retain an
14 attorney in order to file and proceed with a claim and that
15 includes the following:

16 (1) PERSONAL INFORMATION.—The name, ad-
17 dress, date of birth, and death (if applicable), smok-
18 ing history, occupational history, and social security
19 number of the exposed person, and the relationship
20 between the exposed person and the claimant if the
21 claimant is not the exposed person.

22 (2) EXPOSURE INFORMATION.—The years of
23 the exposed person's exposure to asbestos or asbes-
24 tos-containing products; identification of the types of
25 asbestos or asbestos-containing products to which

1 the exposed person was exposed; description of the
2 circumstances, intensity, and duration of the expo-
3 sure; and identification of the worksites or other
4 such locations where such exposures occurred.

5 (3) MEDICAL INFORMATION.—

6 (A) IN GENERAL.—The Corporation may
7 require following medical information:

8 (i) The eligible medical category or
9 categories for which the claimant is apply-
10 ing.

11 (ii) All medical diagnoses, reports and
12 records that relate to any claimed asbes-
13 tos-related condition.

14 (iii) Materials supporting those diag-
15 noses, reports and records that may be re-
16 quired by the Corporation, but in any
17 event including all of the backup data for
18 any pulmonary function tests on which the
19 claimant relies (including all flow volume
20 loops, spirographs, and any other tracings
21 for any test that is performed).

22 (iv) An identification of all medical
23 professionals and medical care facilities in-
24 volved in diagnosing, treating, testing,
25 counseling, or consulting with the exposed

1 person concerning any medical condition
2 within the 5-year period preceding the date
3 on which that information is submitted to
4 the Corporation.

5 (B) ADDITIONAL INFORMATION.—In addi-
6 tion to the medical information under subpara-
7 graph (A), the claimant shall also provide such
8 medical releases as the Corporation may require
9 allowing the Corporation to obtain any and all
10 medical information relevant to the determina-
11 tion of medical eligibility.

12 (4) EXCEPTIONAL MEDICAL CLAIMS.—The
13 claimant may concede that the claim cannot meet
14 the requirements of any eligible medical category
15 and state that the claimant intends to apply to an
16 exceptional medical claims panel for designation as
17 an exceptional medical claim. In that event, the Cor-
18 poration shall refer the claim to an exceptional medi-
19 cal claim panel and the application will be governed
20 by the provisions of section 206.

21 (b) NOTIFICATION OF ACCEPTANCE.—

22 (1) IN GENERAL.—The Corporation shall notify
23 the claimant within 30 days following receipt of the
24 application that the application either—

25 (A) is accepted for processing; or

1 (B) is materially incomplete and cannot be
2 processed until additional information is pro-
3 vided.

4 (2) NOTICE FOR MATERIALLY INCOMPLETE AP-
5 PPLICATIONS.—Any notice that an application is ma-
6 terially incomplete shall describe the missing infor-
7 mation.

8 (3) REQUESTS FOR ADDITIONAL INFORMA-
9 TION.—The issuance of a notice of acceptance shall
10 not preclude the Corporation from requesting addi-
11 tional information regarding a claim if the Corpora-
12 tion subsequently concludes that such information is
13 necessary to make a decision on medical eligibility.

14 (c) RECORDS FROM THIRD PERSONS.—The Corpora-
15 tion may at any time obtain medical, employment, or other
16 relevant records concerning an exposed person from per-
17 sons other than the claimant. If the corporation seeks such
18 additional records, the Corporation shall—

19 (1) give notice to the claimant; and

20 (2) upon request and at the claimant's expense,
21 furnish copies of all records obtained to the claim-
22 ant.

23 (d) ADDITIONAL MEDICAL TESTING.—If the Cor-
24 poration reasonably believes that the Corporation cannot
25 determine, on the basis of the available medical informa-

tion, whether an exposed person meets the medical criteria for 1 of the eligible medical categories, the Corporation may at any time, at its option and expense, require the exposed person to undergo appropriate, reasonable, and noninvasive medical examination or testing (excluding any sort of computed tomography (CT) scan).

(e) TESTIMONIAL INFORMATION UNDER OATH.—All testimonial information provided to the Corporation in connection with a claim, other than information in any medical report or records, shall be made—

(1) under oath;

(2) by sworn affidavit; or

(3) by written declaration subscribed to as true under penalty of perjury.

(f) DETERMINATION OF MEDICAL ELIGIBILITY.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable and, but not later than 60 days after the issuance of a notice of acceptance, the Corporation shall issue either—

(A) a certificate of medical eligibility stating each eligible medical category for which the claimant qualifies; or

(B) a finding of noneligibility.

(2) EXTENSION.—The Corporation may extend the period of time beyond the period specified in

1 paragraph (1) if the Corporation determines that ex-
 2 tension to be necessary to secure additional informa-
 3 tion that is essential to the determination of medical
 4 eligibility.

5 (3) STATEMENT IN REASON.—If the claim is re-
 6 jected wholly or in part, the certificate of eligibility
 7 or finding of noneligibility shall be accompanied by
 8 a brief written statement of reasons.

9 (g) RECONSIDERATION.—

10 (1) IN GENERAL.—The claimant may seek re-
 11 consideration of the Corporation's determination
 12 under subsection (f) by submitting to the Corpora-
 13 tion a written request for reconsideration within 60
 14 days after the date of the Corporation's determina-
 15 tion under subsection (f). The Corporation may ex-
 16 tend the time for submitting a request for reconsid-
 17 eration upon the claimant's request. The request for
 18 reconsideration shall include a statement of the
 19 grounds for reconsideration and shall be accom-
 20 panied by any additional evidence on which the
 21 claimant relies.

22 (2) REFERRAL.—The Corporation shall refer a
 23 request for reconsideration to a panel of 2 physi-
 24 cians with expertise in the medical issue or issues
 25 raised by the claimant. The panel of physicians may

1 request further information from the applicant or
2 from third parties, or may require additional medical
3 examination or testing, in accordance with the provi-
4 sions of subsections (c) and (d).

5 (3) OPERATION OF PANEL.—The panel of phy-
6 sicians shall consider the issues raised by the request
7 for reconsideration de novo on the basis of all of the
8 evidence before the Corporation. If the panel of phy-
9 sicians agrees on the disposition of the request for
10 reconsideration, the panel shall render a decision. If
11 the panel is not in agreement, the Corporation shall
12 appoint to the panel a third physician with expertise
13 in the issues raised by the claimant, and the panel
14 thus augmented will render a decision.

15 (4) ACCEPTANCE OR DENIAL OF REQUESTS.—

16 (A) ACCEPTANCE.—If the panel approves
17 the request for reconsideration, wholly or in
18 part, the Corporation shall issue a certificate of
19 medical eligibility for the eligible medical cat-
20 egories for which the panel finds that the claim-
21 ant qualifies.

22 (B) DENIAL.—If the panel denies the re-
23 quest for reconsideration, or if the certificate of
24 eligibility on reconsideration rejects any claim
25 made by the claimant, wholly or in part, the

1 panel shall provide a brief written statement of
2 reasons.

3 (5) ACTION ON REQUEST FOR RECONSIDER-
4 ATION.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), the Corporation shall act upon a re-
7 quest for reconsideration as soon as practicable
8 but not later than 30 days after receiving the
9 request.

10 (B) EXTENSIONS.—The Corporation may
11 extend the period specified in subparagraph (A)
12 if the Corporation determines the extension to
13 be necessary to secure additional information
14 that is essential to the disposition of the request
15 for reconsideration.

16 (h) REAPPLICATION.—After making an application
17 under this title, a claimant may file a new application
18 under this title at any time. Any such new application filed
19 within 1 year after the date on which the Corporation
20 issued a final finding of noneligibility shall identify the
21 previous application and any relevant changes in cir-
22 cumstances.

23 **SEC. 206. EXCEPTIONAL MEDICAL CLAIMS.**

24 (a) EXCEPTIONAL MEDICAL CLAIMS PANEL.—

1 (1) IN GENERAL.—The Corporation shall estab-
 2 lish 1 or more exceptional medical claims panels.
 3 Each exceptional medical claims panel shall be com-
 4 prised of 5 physicians, including—

5 (A) 2 Board-certified pulmonary special-
 6 ists;

7 (B) 1 Board-certified radiologist (who is
 8 either a certified B-reader or a specialist in
 9 computed tomography); and

10 (C) 2 Board-certified pathologists.

11 (2) DETERMINATIONS.—Each exceptional medi-
 12 cal claims panel shall determine whether claims re-
 13 ferred to the panel meet the requirements of this
 14 section for designation as exceptional medical claims.

15 (b) TIME TO APPLY.—

16 (1) IN GENERAL.—Subject to paragraph (2), a
 17 claimant may apply to the Corporation for designa-
 18 tion of his claim as an exceptional medical claim if
 19 the claimant—

20 (A) concedes (either before or after a de-
 21 termination is made under section 205(f)) that
 22 the claim does not meet the medical criteria in
 23 sections 201 through 204; or

24 (B) seeks designation of the claim as an
 25 exceptional medical claim within 60 days after

1 a determination on reconsideration under sec-
 2 tion 205(g) that the claim does not meet the
 3 medical criteria in sections 201 through 204,
 4 wholly or in part.

5 (2) PROHIBITION.—The Corporation shall not
 6 accept any application for designation as an excep-
 7 tional medical claim, if a claimant has—

8 (A) filed an action under section 208 for
 9 review of the Corporation’s determination on re-
 10 consideration; or

11 (B) commenced alternative dispute resolu-
 12 tion procedures under title III.

13 (c) CONTENTS OF APPLICATION.—

14 (1) IN GENERAL.—The application for designa-
 15 tion as an exceptional medical claim shall include the
 16 information required by the Corporation under sec-
 17 tion 205(a) and shall, in addition, be supported, as
 18 appropriate for the eligible medical category claimed,
 19 by the report of—

20 (A) a Board-certified internist;

21 (B) a Board-certified pulmonary specialist;

22 (C) a Board-certified pathologist; or

23 (D) a Board-certified oncologist.

24 (2) REPORT.—The physician’s report shall con-
 25 tain—

1 (A) a complete review of the exposed per-
2 son's medical history and current condition;

3 (B) such additional material by way of
4 analysis and documentation as shall be pre-
5 scribed by the Corporation; and

6 (C) a detailed explanation why the claim
7 meets the standard for acceptance as an excep-
8 tional medical claim set forth in subsection (d).

9 (d) STANDARD FOR ACCEPTANCE.—The exceptional
10 medical claims panel shall designate a claim as an excep-
11 tional medical claim only if the claimant cannot satisfy
12 the requirements for a given eligible medical category for
13 reasons beyond the control of the claimant, but dem-
14 onstrates, through clear and convincing evidence, that the
15 exposed person has an asbestos-related condition that is
16 substantially comparable to the condition of an exposed
17 person who would satisfy the requirements of a given eligi-
18 ble medical category.

19 (e) FURTHER TESTING.—The exceptional medical
20 claims panel may order additional appropriate, reasonable,
21 and noninvasive testing or examination of the exposed per-
22 son (including computed tomography (CT) scanning).
23 Tests ordered by an exceptional medical claims panel shall
24 be made at the expense of the Corporation.

1 (f) **DECISION.**—The decision of the exceptional medi-
 2 cal claims panel shall not be subject to further review
 3 within the Corporation. If the exceptional medical claims
 4 panel decides that a claim should be designated, wholly
 5 or in part, as an exceptional medical claim, the Corpora-
 6 tion shall issue a certificate of medical eligibility which
 7 shall designate the claim as an exceptional medical claim
 8 and state the eligible medical category or categories for
 9 which the claim qualifies by virtue of that designation.

10 **SEC. 207. CONFIDENTIALITY.**

11 The Corporation shall observe the requirements of
 12 section 552a of title 5, United States Code, with respect
 13 to information that it receives regarding a claimant or ex-
 14 posed person. The production of that information to re-
 15 spondents in accordance with section 303(c) shall be
 16 deemed a routine use of the information within the mean-
 17 ing of section 552a(a)(7) of title 5, United States Code.

18 **SEC. 208. JUDICIAL REVIEW.**

19 (a) **IN GENERAL.**—

20 (1) **JUDICIAL REVIEW.**—The district courts of
 21 the United States shall have exclusive jurisdiction,
 22 without regard to the amount in controversy or the
 23 citizenship of the parties, of any action to review a
 24 determination of the Corporation—

1 (A) after a reconsideration by the Corpora-
 2 tion under section 205(g); or

3 (B) with respect to designation as an ex-
 4 ceptional medical claim under section 206.

5 (2) CERTAIN DETERMINATIONS NOT REVIEW-
 6 ABLE.—A determination under section 205(f) shall
 7 not be reviewable.

8 (b) PERIOD FOR COMMENCING ACTION.—

9 (1) IN GENERAL.—An action for review under
 10 this section shall be commenced not later than 60
 11 days after the later of, as applicable—

12 (A) the determination on reconsideration
 13 made under section 205(g) with respect to
 14 which review is sought; or

15 (B) the decision that the claimant does not
 16 qualify as an exceptional medical claim.

17 (2) EFFECT OF CERTAIN PENDING APPLICA-
 18 TIONS.—No action for review under this section may
 19 be commenced while an application for designation
 20 as an exceptional medical claim is pending.

21 (c) GROUNDS FOR UPHOLDING DETERMINATION.—

22 The court shall uphold the determination of the Corpora-
 23 tion if the determination is supported by substantial evi-
 24 dence on the record as a whole and is not contrary to law.

25 Due account shall be taken of the rule of prejudicial error.

1 (d) RECORDS.—In applying the standard set forth in
 2 subsection (c), the record referred to in that subsection
 3 shall consist of—

4 (1) the information submitted to the Corpora-
 5 tion or the exceptional medical claims panel by the
 6 claimant;

7 (2) records and other information obtained by
 8 the Corporation or exceptional medical claims panel
 9 relating to the claim; and

10 (3) the results of any medical tests adminis-
 11 tered at the direction of the Corporation or excep-
 12 tional medical claims panel.

13 **TITLE III—ALTERNATIVE** 14 **DISPUTE RESOLUTION**

15 **SEC. 301. RULES OF PROCEDURE.**

16 (a) IN GENERAL.—The Board shall establish rules of
 17 procedure for the alternative dispute resolution process.
 18 Such rules of procedure shall be designed to ensure that
 19 claims will be resolved in a prompt, efficient, fair, and in-
 20 expensive manner and shall include—

21 (1) reasonable time limits and rules regarding
 22 the time at which actions of the Corporation become
 23 final;

1 (2) procedures relating to the notification of re-
2 spondents, including reasonable and limited discov-
3 ery;

4 (3) procedures for the disclosure of information
5 necessary for settlement, including the timing of dis-
6 closure and determination of the information that
7 must be disclosed;

8 (4) rules regarding protection of confidential in-
9 formation;

10 (5) procedures for the selection of arbitrators;

11 (6) arbitration procedures designed to further
12 the objective of prompt, efficient, fair and inexpen-
13 sive dispute resolution including simplified pleadings,
14 reasonable limitations on discovery, resolution of
15 prehearing motions including motions for summary
16 disposition, appropriate, evidentiary rules, and effi-
17 cient conduct of hearings; and

18 (7) procedures for just and reasonable sanctions
19 to ensure compliance with the rules and orders of
20 the Corporation.

21 (b) REPRESENTATION BY COUNSEL.—Parties shall
22 have the right to be represented by counsel at all phases
23 of the alternative dispute resolution process.

24 (c) EFFECT OF PRESENTING STATEMENTS.—By pre-
25 senting to the Corporation any statement, motion, or other

1 paper, counsel and the party represented by that counsel
 2 shall be considered to warrant that to the best of their
 3 knowledge, information, and belief, formed after reason-
 4 able inquiry—

5 (1) the statement, motion, or other paper is not
 6 being presented for any improper purpose;

7 (2) the claims, defenses, or other legal conten-
 8 tions in that statement, motion, or other paper are
 9 warranted by applicable law or by a nonfrivolous ar-
 10 gument for the extension, modification, or reversal
 11 of applicable law for the establishment of new law;

12 (3) the allegations and other factual contentions
 13 have evidentiary support; and

14 (4) the denials of factual contentions are war-
 15 ranted on the evidence.

16 (d) CONTRACT SERVICE PROVIDERS.—The Corpora-
 17 tion may contract with providers of alternative dispute res-
 18 olution services to provide mediation or arbitration under
 19 this part. To the extent appropriate and consistent with
 20 this Act, the Board may adopt the rules of procedure of
 21 such contract service providers.

22 **SEC. 302. MOTIONS OFFICERS.**

23 (a) IN GENERAL.—Upon the issuance of a certificate
 24 of eligibility, the Corporation shall assign a motions officer
 25 to the claim.

1 (b) AUTHORITY OF MOTIONS OFFICER.—

2 (1) IN GENERAL.—The motions officer shall
 3 have the authority to determine all procedural issues
 4 in the alternative dispute resolution process except
 5 such matters as may be within the authority of a
 6 mediator or arbitrator assigned to the claim.

7 (2) AUTHORITY.—Without limitation, the mo-
 8 tions officer may—

9 (A) determine whether notice shall be pro-
 10 vided to any respondent under section 303 or
 11 304;

12 (B) issue subpoenas to parties and non-
 13 parties for testimony and documents, in accord-
 14 ance with the terms of section 308;

15 (C) enter scheduling orders and other or-
 16 ders to control the progress of the proceedings;

17 (D) resolve discovery disputes; and

18 (E) exercise any other authority conferred
 19 by procedural rules, policies, or procedures es-
 20 tablished by the Corporation.

21 **SEC. 303. NOTICE TO RESPONDENTS.**

22 (a) IN GENERAL.—

23 (1) IN GENERAL.—Within such time after re-
 24 ceiving a final certificate of eligibility as the Cor-
 25 poration may provide, a claimant shall provide to the

1 Corporation the name and address of each person
2 that claimant alleges is responsible for his asbestos-
3 related injury and for each such person a verified
4 particularized statement in a form prescribed by the
5 Corporation of the basis for the allegation that that
6 person is or may be responsible for his injury.

7 (2) CONTENTS OF PARTICULARIZED STATE-
8 MENT.—A particularized statement under paragraph
9 (1) shall include, as applicable—

10 (A) the dates of exposure for each relevant
11 time period;

12 (B) the worksite or other place of expo-
13 sure;

14 (C) the nature and frequency of the expo-
15 sure;

16 (D) if the exposure was occupational, the
17 name of the exposed person's employer and a
18 description of the exposed person's job and
19 working conditions;

20 (E) each asbestos-containing product or
21 material to which the claimant was exposed at
22 each place of exposure; and

23 (F) any other information that the Cor-
24 poration may require by rule or otherwise in all
25 or in particular classes of cases.

1 (b) NOTIFICATION.—

2 (1) IN GENERAL.—The Corporation shall
3 promptly notify each person identified by the claim-
4 ant pursuant to subsection (a), and for whom a com-
5 plete particularized statement has been submitted,
6 that it has been named as a respondent.

7 (2) COPIES OF PARTICULARIZED STATE-
8 MENTS.—At the same time as the Corporation pro-
9 vides the notification under paragraph (1), the Cor-
10 poration shall provide to each respondent a copy of
11 all particularized statements submitted to the Cor-
12 poration under subsection (a).

13 (c) INFORMATION.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the Corporation shall provide to each re-
16 spondent, on request and at the respondent's ex-
17 pense, a copy of all information submitted to the
18 Corporation by the claimant, records and other in-
19 formation obtained by the Corporation relating to
20 the claim and the results of any medical tests ad-
21 ministered at the Corporation's direction.

22 (2) EXCEPTION.—The Corporation shall not
23 provide the information described in this subsection
24 to the respondent until the respondent has received
25 a protective order, signed by or on behalf of the re-

1 spondent, in a form prescribed by the Corporation,
2 that preserves the confidentiality of medical, employ-
3 ment, and other information that the Corporation
4 reasonably designates as confidential.

5 (d) DISCOVERY.—

6 (1) IN GENERAL.—For good cause shown and
7 subject to reasonable limitations, a motions officer
8 may allow discovery for the purpose of obtaining in-
9 formation necessary to allow the claimant to provide
10 a particularized statement under subsection (a).

11 (2) EXTENSIONS.—The motions officer may
12 grant reasonable extensions of time for naming re-
13 spondents in order to allow for the completion of dis-
14 covery under this subsection.

15 **SEC. 304. ADDITIONAL RESPONDENTS.**

16 (a) IN GENERAL.—

17 (1) IN GENERAL.—Any respondent notified pur-
18 suant to section 303 may, within such period of time
19 as the Corporation may provide, identify additional
20 respondents and request the Corporation to notify
21 these additional respondents by providing to the
22 Corporation the particularized statement required
23 under section 303(a) with respect to each such newly
24 identified respondent.

1 (2) ACCEPTANCE OF INFORMATION.—For pur-
2 poses of this subsection, a respondent may accept as
3 true any assertion made by the claimant in a par-
4 ticularized statement submitted under section
5 303(a), unless the respondent knows or with reason-
6 able investigation should know that that assertion is
7 untrue.

8 (b) PROVISION OF INFORMATION.—As soon as prac-
9 ticable after the identification of additional persons under
10 subsection (a), the Corporation shall provide to each addi-
11 tional person identified under that subsection—

12 (1) the particularized statement required under
13 that subsection; and

14 (2) the information provided to original re-
15 spondents under section 303 (b) and (c), subject to
16 receiving the signed protective order described in
17 section 303(c).

18 (c) RIGHTS OF ADDITIONAL RESPONDENTS.—Addi-
19 tional respondents notified under this section shall have
20 the same right to add further additional respondents as
21 is conferred upon originally named respondents under sub-
22 section (a).

23 (d) DISCOVERY.—

24 (1) IN GENERAL.—For good cause shown and
25 subject to reasonable limitations, a motions officer

1 may allow discovery for the purpose of obtaining in-
2 formation necessary to allow a respondent to provide
3 the information required under subsection (a).

4 (2) EXTENSIONS.—The motions officer may
5 grant reasonable extensions of time for naming addi-
6 tional respondents in order to allow for the comple-
7 tion of discovery under this subsection.

8 (e) NOTICE OF EXPIRATION OF PERIOD FOR ADDING
9 ADDITIONAL RESPONDENTS.—The Corporation shall pro-
10 vide notice to all parties at the time that period for adding
11 additional respondents has expired. No new party shall be
12 added to the proceeding after the expiration of that period,
13 except on motion for good cause.

14 **SEC. 305. GRACE PERIOD.**

15 The Corporation shall establish a grace period of not
16 to exceed 60 days after expiration of the period of time
17 for adding additional respondents referred to in section
18 304, during which the parties shall be encouraged to reach
19 voluntary settlements without the need for mediation.

20 **SEC. 306. MEDIATION.**

21 (a) APPOINTMENT OF MEDIATOR.—Upon the expira-
22 tion of a grace period referred to in section 305, the Cor-
23 poration shall appoint a mediator to assist the parties who
24 have not settled in the grace period in settling the claim.

1 (b) DISCLOSURE OF INFORMATION NECESSARY FOR
2 SETTLEMENT.—

3 (1) IN GENERAL.—Within such period of time
4 after appointment of a mediator as the Corporation
5 shall prescribe, each party shall serve upon all other
6 nonsettling parties a statement of information re-
7 quired for settlement.

8 (2) INFORMATION INCLUDED.—The information
9 to be included in a statement referred to in para-
10 graph (1) shall be determined by the Corporation to
11 be reasonably necessary for the parties to evaluate
12 the claim.

13 (3) INCORPORATION BY REFERENCE.—With re-
14 spect to a statement referred to in paragraph (1),
15 information previously provided to the Corporation
16 by any party may be incorporated by reference and
17 need not be resubmitted.

18 (4) RULE OF CONSTRUCTION.—Nothing in this
19 subsection shall be construed to require the disclo-
20 sure of any information privileged under applicable
21 law.

22 (c) TIME LIMITS.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), mediation conducted under this section

1 shall be completed not later than 60 days after the
2 appointment of the mediator.

3 (2) EXTENSION.—The time period specified in
4 paragraph (1) may be extended by the mediator if—

5 (A)(i) the claimant has failed to provide
6 the information required under subsection (b);
7 and

8 (ii) that extension is necessary to allow for
9 simultaneous mediation of a group of claims, or
10 for other good cause; or

11 (B) for a period not to exceed 60 days, if
12 in the judgment of the mediator, the claimant's
13 final demand under subsection (e) is not made
14 in good faith, on consideration of the legal and
15 factual basis of the claim.

16 (d) CONFIDENTIALITY.—All statements made by any
17 party in mediation shall be confidential and shall not be
18 admissible in any trial or arbitration except as allowed
19 under rule 408 of the Federal Rules of Evidence.

20 (e) GOOD FAITH OFFERS AND DEMANDS.—

21 (1) GOOD FAITH OFFERS.—On the date that is
22 15 days before the close of the mediation period, the
23 claimant shall provide to each nonsettling respondent
24 or jointly represented group of respondents a
25 final good faith demand of settlement.

1 (2) GOOD FAITH OFFERS IN REPLY.—On the
 2 date that is 10 days before the close of the medi-
 3 ation period, each respondent or jointly represented
 4 group of respondents shall make a final good faith
 5 offer in reply.

6 (3) FAILURE TO MAKE A SETTLEMENT
 7 OFFER.—If a respondent or jointly represented
 8 group of respondents fails to make a settlement
 9 offer under this section, that respondent or group of
 10 respondents shall be deemed to have made a settle-
 11 ment offer of \$0.

12 (4) EFFORTS OF MEDIATOR.—During the 10-
 13 day period preceding the close of the mediation pe-
 14 riod, or any extension of that 10-day period, the me-
 15 diator shall work with the parties in a further effort
 16 to settle the claim.

17 (f) RELEASE FROM MEDIATION.—

18 (1) IN GENERAL.—At the close of the mediation
 19 period under this section, the mediator shall issue to
 20 the claimant a release from mediation.

21 (2) EFFECT OF RELEASE.—After the issuance
 22 of a release from mediation under paragraph (1),
 23 the claimant may commence a civil action or may
 24 elect arbitration under section 307.

1 **SEC. 307. ARBITRATION.**

2 (a) **ELECTION TO ARBITRATE.**—A claimant may
3 elect arbitration under this section by serving notice of
4 such election within 30 days following release from medi-
5 ation on all respondents that have not previously settled.
6 All such respondents will be parties to the arbitration.

7 (b) **FEDERAL ARBITRATION ACT.**—All arbitrations
8 hereunder shall be subject to the provisions of title 9,
9 United States Code, that are commonly referred to as the
10 Federal Arbitration Act including sections 1 through 6
11 and 8 through 16 of that title, except that, the provisions
12 of this Act and rules adopted by the Corporation under
13 this Act shall be effective notwithstanding any inconsistent
14 provision of title 9, United States Code.

15 (c) **ARBITRATION BY SPECIAL AGREEMENT.**—Noth-
16 ing in this section shall be construed as prohibiting con-
17 sensual arbitration pursuant to a special agreement en-
18 tered into by the claimant and 1 or more of the respond-
19 ents. The terms of such a special agreement shall prevail,
20 as to the parties to that agreement, over the provisions
21 of this section (other than subsection (h)) and any rules
22 adopted pursuant to section 301.

23 (d) **STATUTORY ARBITRATION.**—In the absence of a
24 special agreement to arbitrate, arbitrations shall be con-
25 ducted under rules adopted by the Corporation pursuant
26 to section 301.

1 (e) SUBPOENA POWERS OF ARBITRATORS.—Arbitra-
2 tors may issue subpoenas to parties and nonparties for
3 testimony and documents in accordance with the terms of
4 section 308.

5 (f) LAW TO BE APPLIED.—

6 (1) IN GENERAL.—Subject to paragraph (2)
7 and unless otherwise provided in this Act, the arbi-
8 trator shall, with respect to each respondent, apply
9 the law, including the law relating to choice of law,
10 that would be applied by a court designated by the
11 claimant which would have jurisdiction over that re-
12 spondent.

13 (2) EXCEPTION.—If a respondent demonstrates
14 to the satisfaction of an arbitrator that the court
15 designated by the claimant would dismiss or transfer
16 under forum non conveniens or a similar doctrine,
17 then the arbitrator shall apply the law of the State
18 that has the most significant relationship to the oc-
19 currence and the parties.

20 (g) PRESUMPTION APPLICABLE TO MEDICAL DETER-
21 MINATION.—A finding of medical eligibility by the Cor-
22 poration shall be presumed correct and shall be conclusive
23 unless rebutted by clear and convincing evidence, except
24 that, to the extent that the finding of medical eligibility
25 is based upon evidence of exposure to asbestos, proof with

1 respect to such exposure shall be determined in accordance
2 with applicable State law.

3 (h) AWARDS.—The arbitrator shall issue awards with
4 respect to each respondent within time periods set by the
5 Corporation. The awards shall be accompanied by findings
6 of fact and conclusions of law. Each respondent shall be
7 jointly and severally liable to the claimant to the extent
8 provided by applicable State law, as follows:

9 (1)(A) In any case in which joint and several li-
10 ability exists under applicable State law, the arbitra-
11 tor shall determine the total joint and several liabil-
12 ity of all respondents that have not been released by
13 the claimant or dismissed from the proceeding.

14 (B) In addition to making a determination
15 under subparagraph (A), the arbitrator shall deter-
16 mine the amount allocable to each such respondent
17 based on principles of comparative fault or respon-
18 sibility.

19 (C)(i) Subject to clause (ii), any respondent
20 who has obtained a release from the claimant prior
21 to the issuance of the arbitrator's award shall be
22 fully protected from claims for contribution or in-
23 demnity.

1 (ii) In any case in which a respondent obtains
2 a release, the award against the remaining respond-
3 ents shall be reduced by the greater of—

4 (I) consideration paid; or

5 (II) the amount stated in the release.

6 (iii) The total award, reduced by the aggregate
7 amount of reductions determined under clause (ii)
8 for all respondents receiving a release, shall be allo-
9 cated among the remaining respondents according to
10 the arbitrator's allocation of comparative shares of
11 fault or responsibility.

12 (2) In any case in which joint and several liabil-
13 ity has been abolished under applicable State law,
14 the arbitrator shall determine in accordance with the
15 law of that State the share of several liability (re-
16 ferred to in this subsection as the “several share”)
17 of each respondent that has not been released or dis-
18 missed from the proceeding.

19 (3) In any case in which joint and several liabil-
20 ity has been abolished under applicable State law
21 with respect to only a portion of damages, the arbi-
22 trator shall determine in accordance with applicable
23 State law—

1 (A) the several share of each respondent
 2 that has not been released or dismissed from
 3 the proceeding; and

4 (B) the total amount of joint and several
 5 liability of all such respondents.

6 (4) The allocation of the joint and several por-
 7 tion of the award among the respondents, and the
 8 reduction of the total award on account of settle-
 9 ments, shall be made in accordance with subsection
 10 (h)(1), except that—

11 (A) only the joint and several portion of an
 12 award may be reduced by amounts paid in set-
 13 tlement by released persons; and

14 (B) only that portion of the amount paid
 15 by any released person in settlement with re-
 16 spect to the joint and several portion of dam-
 17 ages shall be so applied to reduce the award.

18 (i) CONTRIBUTION RIGHTS RETAINED BY RESPOND-
 19 ENTS IN ADR.—

20 (1) IN GENERAL.—The entry of an arbitration
 21 award against any respondent under this section
 22 shall give rise to a right of contribution on the part
 23 of that respondent against any joint tortfeasor
 24 whose liability is extinguished by the award without

1 the necessity that the award be enforced as a court
2 judgment.

3 (2) EFFECT OF SETTLEMENT.—A settlement
4 between a respondent and a claimant under this sec-
5 tion that extinguishes in whole or in part the liabil-
6 ity of a joint tortfeasor shall not extinguish the set-
7 tling respondent's right of contribution against that
8 joint tortfeasor.

9 (j) PENALTY FOR INADEQUATE OFFER IN MEDI-
10 ATION.—

11 (1) IN GENERAL.—If the final offer made by a
12 respondent or jointly represented group of respond-
13 ents under section 306(e) is less than the amount
14 specified in paragraph (2), the arbitrator shall add
15 a 10-percent penalty to the award against that re-
16 spondent or each member of the group of respond-
17 ents.

18 (2) AMOUNT.—The amount specified in this
19 paragraph is, with respect to a respondent or a
20 jointly represented group of respondents, an amount
21 equal to 75 percent of the share of the total liability
22 (exclusive of prejudgment interest, if any) awarded
23 in arbitration against that respondent or that group
24 of respondents as a whole, the arbitrator shall add
25 a 10-percent penalty to the award against such re-

1 spondent or each member of such group of respond-
2 ents.

3 (3) EXCLUSION.—A penalty added under para-
4 graph (1) shall not be counted in any determination
5 of maximum allowable attorneys' fees under section
6 503.

7 (k) CONSOLIDATIONS.—Claims with respect to mul-
8 tiple exposed persons shall not be consolidated for hearing
9 on the merits without the consent of all parties.

10 **SEC. 308. SUBPOENA POWERS OF MOTIONS OFFICERS AND**
11 **ARBITRATORS.**

12 (a) IN GENERAL.—A motions officer or an arbitrator
13 under this title may summon in writing any person to at-
14 tend before that officer or arbitrator as a witness, or to
15 appear for a deposition, and in a proper case to bring with
16 him or her any book, record, document, or paper which
17 may be deemed material as evidence in the case.

18 (b) FEES.—The fees for attendance under subsection
19 (a) shall be the same as the fees of witnesses before mas-
20 ters of the United States courts.

21 (c) SUMMONS.—

22 (1) IN GENERAL.—A summons under this sec-
23 tion shall—

24 (A) be issued in the name of the motions
25 officer or arbitrator;

1 (B) be signed by the motions officer or ar-
2 bitrator;

3 (C) be directed to the person summoned;
4 and

5 (D) be served in accordance with rule
6 45(b)(1) of the Federal Rules of Civil Proce-
7 dure.

8 (2) EFFECT OF REFUSAL OR NEGLECT.—If any
9 person summoned to testify or produce documents
10 under paragraph (1) refuses or neglects to obey that
11 summons, upon petition, the United States District
12 Court for the District of Columbia or the district
13 court for the district in which the testimony is to be
14 taken or the document production is to take place
15 may, in the same manner provided by law for secur-
16 ing the attendance of witnesses or for the punish-
17 ment of witnesses for neglect or refusal to attend in
18 the courts of the United States—

19 (A) compel—

20 (i) the attendance of that person be-
21 fore the motions officer or arbitrator;

22 (ii) the appearance of that person for
23 a deposition; or

24 (iii) the production of documents; or

25 (B) punish that person for contempt.

1 **TITLE IV—CIVIL ACTIONS**

2 **SEC. 401. PREREQUISITES FOR CIVIL ACTION.**

3 Subject to section 702, no civil action asserting any
4 asbestos claim may be filed or maintained unless the plain-
5 tiff has obtained a certificate of medical eligibility and re-
6 lease from mediation.

7 **SEC. 402. INDIVIDUAL TRIALS.**

8 (a) IN GENERAL.—No class action suit, joinder of
9 parties, aggregation of claims, consolidation of actions, ex-
10 trapolation, or other device to determine multiple asbestos
11 claims on a collective basis shall be permitted without the
12 consent of each defendant.

13 (b) REMOVAL.—Any defendant in a civil action that
14 involves a violation of this section may remove such action
15 to an appropriate Federal district court.

16 (c) JURISDICTION.—The district courts of the United
17 States shall have jurisdiction of all civil actions removed
18 pursuant to this section without regard to diversity of citi-
19 zenship or amount in controversy.

20 **SEC. 403. CERTIFICATE OF MEDICAL ELIGIBILITY PRE-** 21 **SUMED CORRECT.**

22 A finding of medical eligibility by the Corporation
23 shall be presumed correct and shall be conclusive unless
24 rebutted by clear and convincing evidence, except that, to
25 the extent that a finding of medical eligibility is based on

1 evidence of exposure to asbestos, the burden of proof with
2 respect to such exposure shall be determined in accordance
3 with applicable State law.

4 **SEC. 404. PENALTY FOR INADEQUATE OFFER IN MEDI-**
5 **ATION.**

6 (a) IN GENERAL.—If the final offer made by a re-
7 spondent or jointly represented group of respondents
8 under section 306(e) is less than the amount specified in
9 paragraph (2), the court shall add a 10-percent penalty
10 to the award against that respondent or each member of
11 the group of respondents.

12 (b) AMOUNT.—The amount specified in this para-
13 graph is, with respect to a respondent or a jointly rep-
14 resented group of respondents, an amount equal to 75 per-
15 cent of the share of the total liability (exclusive of prejudg-
16 ment interest, if any) assigned by the jury or other fact
17 finder to that respondent or that group of respondents as
18 a whole, the arbitrator shall add a 10-percent penalty to
19 the award against such respondent or each member of
20 such group of respondents.

21 (c) EXCLUSION.—A penalty added under paragraph
22 (1) shall not be counted in any determination of maximum
23 allowable attorneys' fees under section 503.

1 **TITLE V—RULES APPLICABLE**
2 **TO ARBITRATIONS AND CIVIL**
3 **ACTIONS**

4 **SEC. 501. ELEMENTS OF PROOF; RELIEF.**

5 Subject to section 702 and notwithstanding any other
6 provision of law, the following shall apply in all civil ac-
7 tions and arbitrations involving an asbestos claim:

8 (1) BASIC REQUIREMENT OF ELIGIBLE MEDI-
9 CAL CONDITION.—No person shall recover in any
10 civil action or arbitration damages or other relief
11 with respect to an asbestos claim unless that person
12 establishes, by evidence meeting the requirements of
13 section 201, 202, 203, 204, or 206, as appropriate,
14 the existence of an eligible medical condition.

15 (2) ISSUES TO BE DECIDED.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), the only issues that may be decided
18 in any civil action or arbitration involving an
19 asbestos claim are—

20 (i) whether the exposed person with
21 respect to whom a claim is made has or
22 had an asbestos-related disease or condi-
23 tion;

24 (ii) whether the exposure of the ex-
25 pose person to asbestos or an asbestos-con-

1 taining product of a defendant or respondent
2 ent was a substantial contributing factor in
3 causing that asbestos-related disease or
4 condition; and

5 (iii) the amount of compensatory damages,
6 if any to be awarded.

7 (B) DETERMINATION OF COMPENSATORY
8 DAMAGES.—In addition to the issues referred to
9 in subparagraph (A), in any proceeding in
10 which, under applicable law, the share of com-
11 pensatory damages allocable to a defendant or
12 respondent is relevant to an issue described in
13 that subparagraph, the share of compensatory
14 damages of that defendant or respondent shall
15 be determined.

16 (C) PROHIBITION.—No evidence that is
17 not relevant to an issue referred to in subpara-
18 graph (A) or (B) may be offered by a claimant
19 against a defendant or respondent in any civil
20 action or arbitration involving an asbestos
21 claim.

22 (3) EMOTIONAL DISTRESS; MEDICAL MONITOR-
23 ING.—No damages or other relief shall be awarded
24 in any civil action or arbitration involving an asbes-
25 tos claim for emotional distress or any other form of

1 mental or emotional harm, or for medical monitoring
2 or surveillance, based wholly or in part on exposure
3 to asbestos unless the requirements of paragraph (1)
4 are met in addition to any other requirement under
5 applicable law for recovery of damages or other relief
6 for emotional distress or medical monitoring or sur-
7 veillance.

8 (4) ENHANCED RISK.—No damages or other re-
9 lief shall be awarded in any civil action or arbitra-
10 tion involving an asbestos claim solely for increased
11 risk of cancer or other disease.

12 (5) PUNITIVE DAMAGES.—No punitive damages
13 shall be awarded in any civil action or arbitration in-
14 volving an asbestos claim.

15 **SEC. 502. TIMELINESS DEFENSES ABOLISHED.**

16 No defense to an asbestos claim based on a statute
17 of limitations or statute of repose, laches, or any other
18 defense based on the timeliness of the claim shall be recog-
19 nized or allowed in any civil action or arbitration unless
20 that claim was untimely as of the date of enactment of
21 this Act.

22 **SEC. 503. ATTORNEYS' FEES.**

23 (a) IN GENERAL.—Notwithstanding any other provi-
24 sion of law or any contract, the aggregate amount of fees,
25 including expenses and other charges, of a claimant's at-

1 torneys in any proceeding covered under this Act shall not
2 exceed an amount equal to 25 percent of the amount of
3 compensation received by the claimant as a result of that
4 proceeding.

5 (b) RULES OF PROCEDURE.—The Corporation shall
6 establish rules of procedure that require any attorney who
7 represents a claimant in any proceeding covered under this
8 Act to submit an itemized statement of expenses and fees
9 to the Corporation before receiving any fee.

10 (c) PENALTIES.—Any attorney who charges, de-
11 mands, receives, or collects, for services rendered in con-
12 nection with any proceeding under this Act, an amount
13 that exceeds the amount that is allowable under this Act
14 shall—

15 (1) be guilty of a misdemeanor; and

16 (2) upon conviction, be subject to a fine of not
17 more than \$10,000, imprisonment for not more than
18 1 year, or both.

19 **SEC. 504. EFFECT ON SUBSEQUENT ACTIONS.**

20 (a) IN GENERAL.—Notwithstanding any other provi-
21 sion of law, a judgment or settlement of an asbestos claim
22 for a nonmalignant condition satisfying the requirements
23 of section 201 shall not preclude a subsequent claim with
24 respect to the same exposed person for a malignant condi-

tion satisfying the requirements of section 202, 203, 204,
or 206, as applicable.

(b) RULE OF CONSTRUCTION.—Subsection (a) shall
not be construed to invalidate any provision of a settle-
ment agreement entered into prior to the date of enact-
ment.

TITLE VI—FUNDING

SEC. 601. COSTS OF MEDICAL REVIEW AND OVERHEAD AND ADMINISTRATION.

(a) PROVISIONAL ALLOCATION.—

(1) ESTIMATE OF COSTS.—

(A) IN GENERAL.—On or before August 1
of each year, the Corporation shall estimate the
costs of the Corporation (exclusive of the cost
of mediation and arbitration that may be recov-
ered under section 602) for the following fiscal
year (beginning on October 1 of that year).

(B) ALLOWANCES FOR CONTINGENCIES;
COSTS OF MEDICAL REVIEW, OVERHEAD, AND
ADMINISTRATION.—In estimating its costs
under this section, the Corporation shall—

(i) make reasonable allowances for
contingencies; and

(ii) state separately those costs di-
rectly related to—

- 1 (I) medical review; or
- 2 (II) general overhead and admin-
- 3 istration of the Corporation.

4 (2) ALLOCATION TO RESPONDENTS.—

5 (A) IN GENERAL.—The Corporation shall
6 proportionally allocate the costs estimated pur-
7 suant to paragraph (1) among all persons
8 named as a respondent during the 12-month
9 period ending the preceding June 30 and shall
10 notify each such person of the amount due pur-
11 suant to that allocation.

12 (B) DETERMINATION OF RESPONDENTS.—
13 In this section, a person shall be considered
14 named as a respondent if notice was provided
15 to that person under section 303 or 304.

16 (C) DETERMINATION OF NUMBER OF PRO-
17 CEEDINGS.—In making an allocation under
18 subparagraph (B), the Corporation shall deter-
19 mine the following:

- 20 (i) For each individual respondent,
21 the total number of proceedings in which
22 the respondent has been named.
- 23 (ii) The total combined number of
24 proceedings for all respondents.

1 (D) COUNTING CLAIMS.—For purposes of
2 a determination under subparagraph (C) all
3 claims, including derivative claims, relating to 1
4 exposed person shall be counted as 1 proceeding
5 for each respondent named in the proceeding.

6 (E) DETERMINATION OF ALLOCATION.—In
7 calculating an allocation made in accordance
8 with subparagraph (A), the total number of
9 proceedings for each respondent shall be divided
10 by the total combined number of proceedings
11 for all respondents to determine the percentage
12 of costs allocable to each individual respondent.

13 (F) PROHIBITION.—The Corporation shall
14 not allocate any of the costs estimated pursuant
15 to paragraph (1) to any respondent whose allo-
16 cable share of the costs, in the absence of such
17 exclusion, is less than a de minimis percentage
18 established by the Corporation. Any such
19 unallocated percentage shall be reallocated to
20 the remaining respondents based upon their
21 original allocation percentages.

22 (3) PAYMENT OF ESTIMATED SHARE OF
23 COSTS.—Each respondent shall pay to the Corpora-
24 tion the allocated share of the respondent of the esti-
25 mated costs of the Corporation not later than 30

1 days after the date of notification of the allocated
2 share of the respondent.

3 (b) FINAL ALLOCATION.—

4 (1) IN GENERAL.—On or before November 30
5 of each year, the Corporation shall determine the
6 total costs of the Corporation (exclusive of the cost
7 of mediation and arbitration that may be recovered
8 from respondents under section 602) for the preced-
9 ing fiscal year ending September 30 and shall allo-
10 cate those costs proportionally, in the manner de-
11 scribed in subsection (a)(2), among persons who
12 were named as respondents in that fiscal year.

13 (2) ATTRIBUTION OF COSTS.—In making an al-
14 location under this subsection, the Corporation shall
15 state separately those costs directly attributable to—

16 (A) the medical review process; or

17 (B) general overhead and administration of
18 the Corporation.

19 (3) PAYMENT OF DEFICIENCIES.—If the
20 amount allocated to any person under this sub-
21 section is greater than the amount deposited by such
22 person under subsection (a)(2) with respect to the
23 preceding fiscal year, that person shall pay the defi-
24 ciency to the Corporation not later than 30 days

1 after receiving a notice of deficiency from the Cor-
2 poration.

3 (4) REFUNDS.—If the amount allocated to any
4 person under this subsection is less than the amount
5 deposited by such person under subsection (a)(2) for
6 the preceding fiscal year, the Corporation shall
7 promptly refund the difference to that respondent.

8 (c) TRANSITIONAL PROVISIONS.—

9 (1) STARTUP FUNDING.—

10 (A) IN GENERAL.—Startup funding shall
11 be provided by voluntary contributions within
12 30 days after appointment and confirmation of
13 the first director of the Board. Those contribu-
14 tions shall be provided by the signatories to a
15 startup funding agreement that all of the de-
16 fendants shall enter into before that date, in ac-
17 cordance with, and contingent only on the
18 terms and conditions contained in that agree-
19 ment.

20 (B) REFUND OF CONTRIBUTIONS.—Unless
21 the Corporation and the donor otherwise agree,
22 the Corporation shall refund contributions made
23 under subparagraph (A) following receipt of the
24 funds allocated pursuant to the initial deter-

1 mination of costs and assessments to defend-
2 ants provided in subsection (c)(2).

3 (C) STARTUP COSTS DEFINED.—For pur-
4 poses of this subsection, startup costs include
5 all reasonable and necessary expenses of the
6 Corporation incurred prior to the availability of
7 transitional funding under paragraph (2).

8 (2) TRANSITIONAL FUNDING.—

9 (A) NOTICE.—As soon as feasible after a
10 majority of the Board is appointed and con-
11 firmed, the Board shall provide notice request-
12 ing the information listed in subparagraph (B)
13 to each defendant served in any civil action in-
14 volving an asbestos claim pending on the date
15 of enactment of this Act. The notice shall be
16 the best practicable notice under the cir-
17 cumstances, including publication in the Fed-
18 eral Register and individual notice to any de-
19 fendant that can be identified through reason-
20 able effort.

21 (B) INFORMATION TO BE PROVIDED.—
22 Within such time as the Corporation may pre-
23 scribe, but not less than 60 days after the date
24 of publication in the Federal Register, each per-
25 son who, as of the date of enactment of this

1 Act, has been served as a defendant in at least
2 5,000 pending civil actions involving asbestos
3 claims shall provide to the Corporation a state-
4 ment containing the following information:

5 (i) The total number of civil actions in
6 which that person was named as a defend-
7 ant.

8 (ii) With respect to each civil action
9 referred to in clause (i)—

10 (I) the name of the lead plaintiff;

11 (II) the name of the lead defend-
12 ant;

13 (III) the court in which the civil
14 action was pending; and

15 (IV) the docket number.

16 (C) COUNTING RULES.—For purposes of
17 subparagraph (B):

18 (i) All asbestos claims relating to a
19 single exposed person, including derivative
20 claims, shall be treated as 1 civil action re-
21 gardless of the number of plaintiffs or de-
22 fendants named in the complaint.

23 (ii) In civil actions involving multiple
24 plaintiffs and defendants, each asbestos
25 claim shall be deemed to have been as-

1 serted against each defendant unless the
2 complaint states otherwise.

3 (iii) Third-party defendants shall cal-
4 culate the number of civil actions involving
5 asbestos claims pending against them as if
6 they had been joined as a defendant by the
7 original plaintiff or plaintiffs.

8 (iv) Cross claims, deemed or other-
9 wise, shall not count as a separate civil ac-
10 tion.

11 (D) SIGNATURE.—The statement of infor-
12 mation required under this paragraph shall be
13 signed on behalf of the defendant by a cor-
14 porate officer or (in the case of a defendant
15 that is not a corporation) a senior official com-
16 parable to a corporate officer, authorized to
17 bind such defendant, attesting under penalty of
18 perjury that the information contained therein
19 is true and complete to the best of his knowl-
20 edge and belief after reasonable investigation.

21 (E) ALLOCATION AND PAYMENT.—

22 (i) IN GENERAL.—The Corporation
23 shall—

24 (I) proportionally allocate the es-
25 timated costs of the Corporation for a

1 transitional period to include the first
2 fiscal years after the date of enact-
3 ment of this Act, in substantially the
4 same manner as the allocation de-
5 scribed in subsection (a)(2), to the de-
6 fendants identified in this paragraph;
7 and

8 (II) notify each such defendant
9 of its proportionate share of such esti-
10 mated transitional costs.

11 (ii) PAYMENT.—Not later than 45
12 days after the date on which a defendant
13 receives a notice made under clause (i)(II),
14 that defendant shall pay its share of the
15 estimated transitional costs to the Cor-
16 poration.

17 (3) RECONCILIATION.—

18 (A) IN GENERAL.—On or before November
19 30 following the end of the transitional period,
20 the Corporation shall—

21 (i) determine the total costs of the
22 Corporation (exclusive of the cost of medi-
23 ation and arbitration that may be recov-
24 ered from respondents under section 602)

1 for the transitional period, including start-
2 up costs; and

3 (ii) proportionally allocate those costs,
4 in substantially the same manner as the al-
5 location described in subsection (a)(2),
6 among defendants who were named as re-
7 spondents during that transitional period.

8 (B) STATEMENT OF COSTS.—In making an
9 allocation under this subsection, the Corpora-
10 tion shall state separately those costs directly
11 attributable to—

12 (i) the medical review process; or

13 (ii) general overhead and administra-
14 tion of the Corporation.

15 (C) PAYMENT OF DEFICIENCIES.—If the
16 amount allocated to any respondent under this
17 subsection is greater than the amount deposited
18 by such respondent under paragraph (2), that
19 respondent shall pay the deficiency to the Cor-
20 poration within 30 days after receiving a notice
21 of deficiency from the Corporation.

22 (D) REFUNDS.—If the amount allocated to
23 any respondent under this subsection is less
24 than the amount deposited by such respondent

1 under paragraph (2), the difference shall be re-
2 funded promptly.

3 **SEC. 602. COST OF MEDIATION AND ARBITRATION.**

4 (a) **MEDIATION.**—The cost of mediation shall be
5 charged, on a per capita basis, to each respondent who
6 participated in the mediation, wholly or in part.

7 (b) **ARBITRATION.**—In the absence of an agreement
8 among the parties to the contrary, the cost of arbitration
9 shall be charged, on a per capita basis, to each respondent
10 who participated in the arbitration, wholly or in part, ex-
11 cept that, the Corporation may by rule provide for a reduc-
12 tion in the costs charged to respondents who settle or are
13 dismissed from arbitration prior to the commencement of
14 the hearing.

15 **SEC. 603. INFORMAL DISPUTE RESOLUTION.**

16 (a) **PROCEDURES.**—The Corporation shall establish
17 expeditious procedures for the informal resolution of dis-
18 putes regarding the assessment of costs under this title.
19 The Corporation may, in its sole discretion, postpone the
20 obligation to pay the disputed assessment, wholly or in
21 part, during the pendency of informal dispute resolution
22 procedures.

23 (b) **VOLUNTARY PROCEDURES.**—The Corporation
24 may agree to participate in voluntary alternative dispute

1 resolution procedures, including mediation and arbitra-
2 tion, to resolve disputes regarding assessments.

3 **SEC. 604. JUDICIAL REVIEW; ENFORCEMENT.**

4 (a) JURISDICTION.—

5 (1) IN GENERAL.—The district courts of the
6 United States shall have exclusive jurisdiction, with-
7 out regard to the amount in controversy or citizen-
8 ship of the parties, to review any assessment of costs
9 made by the Corporation pursuant to this title.

10 (2) TREATMENT OF CHALLENGED ASSESS-
11 MENT.—The reviewing court shall uphold a chal-
12 lenged assessment unless that court determines that
13 that assessment is arbitrary and capricious or other-
14 wise not in accordance with law.

15 (3) PROCEDURES.—No action under this sub-
16 section may be commenced or maintained by any
17 person unless that person first has—

18 (A) exhausted the informal dispute resolu-
19 tion procedures provided under section 603; and

20 (B) paid to the Corporation the entire
21 amount assessed to that person by the Corpora-
22 tion, including the amount in dispute.

23 (b) AUTHORITY OF CORPORATION.—

24 (1) IN GENERAL.—The Corporation shall have
25 the authority to bring an action in a district court

1 of the United States to enforce any obligation im-
2 posed on any person by this title.

3 (2) JURISDICTION.—In an action brought under
4 paragraph (1), the district court of the United
5 States shall have exclusive jurisdiction of such action
6 without regard to the amount in controversy or citi-
7 zenship of the parties.

8 (3) DEFENSES.—The court shall not entertain
9 any defense other than lack of jurisdiction in any ac-
10 tion by the Corporation to recover assessments due
11 under this title unless the assessment is fully paid,
12 with interest. If the assessment is fully paid, with in-
13 terest, the court shall uphold the Corporation's de-
14 termination that a determination is not arbitrary
15 and capricious or otherwise contrary to law.

16 (4) PAYMENT OF COSTS.—In any action under
17 this subsection in which the Corporation prevails,
18 the Corporation shall be entitled to costs, including
19 reasonable attorneys' fees, and interest on any un-
20 paid funds. Interest under this subsection shall be
21 equal to the rate applicable to underpaid taxes under
22 section 6621 of the Internal Revenue Code of 1986.

23 **SEC. 605. PENALTIES.**

24 If any person who is required by section 601 to pro-
25 vide information to the Corporation willfully fails to pro-

1 vide that information within the period of time specified
 2 by the Corporation, that person shall forfeit to the Cor-
 3 poration an amount equal to \$50,000. That forfeiture
 4 shall be payable to the Corporation, and shall be recover-
 5 able in a civil suit in the name of the Corporation brought
 6 under section 604(b).

7 **SEC. 606. ASBESTOS RESOLUTION CORPORATION TRUST**
 8 **FUND.**

9 (a) **ESTABLISHMENT.**—There is established in the
 10 Treasury of the United States a trust fund, to be known
 11 as the Asbestos Resolution Corporation Trust Fund (in
 12 this section referred to as the “Trust Fund”), consisting
 13 of such amounts as are transferred to the Trust Fund
 14 under subsection (b) and any interest earned on invest-
 15 ment of amounts in the Trust Fund under subsection
 16 (c)(2).

17 (b) **TRANSFER OF AMOUNTS EQUIVALENT TO CER-**
 18 **TAIN TARIFFS.**—The Corporation shall transfer to the
 19 Secretary of the Treasury for deposit in the Trust Fund
 20 any—

21 (1) amounts paid to the Corporation under sec-
 22 tions 601 and 602;

23 (2) amounts received by the Corporation as vol-
 24 untary donations;

1 (3) interest earned on deposits made by the
2 Corporation;

3 (4) amounts received by the Corporation as
4 judgments, costs (including reasonable attorneys'
5 fees) and interest under section 604 or any other ap-
6 plicable provision of law; and

7 (5) penalties paid to the Corporation under sec-
8 tion 605.

9 (c) INVESTMENT OF TRUST FUND.—

10 (1) IN GENERAL.—It shall be the duty of the
11 Secretary of the Treasury to invest such portion of
12 the Trust Fund as is not, in the Secretary's judg-
13 ment, required to meet current withdrawals. Such
14 investments may be made only in interest-bearing
15 obligations of the United States or in obligations
16 guaranteed as to both principal and interest by the
17 United States.

18 (2) SALE OF OBLIGATIONS.—Any obligation ac-
19 quired by the Trust Fund (except special obligations
20 issued exclusively to the Trust Fund) may be sold by
21 the Secretary of the Treasury at the market price,
22 and such special obligations may be redeemed at par
23 plus accrued interest.

24 (3) CREDITS TO TRUST FUND.—The interest
25 on, and the proceeds from the sale or redemption of,

1 any obligations held in the Trust Fund shall be
2 credited to and form a part of the Trust Fund.

3 (d) OBLIGATIONS FROM TRUST FUND.—The Cor-
4 poration may obligate such sums as are available in the
5 Trust Fund (including any amounts not obligated in pre-
6 vious fiscal years) in a manner consistent with this Act.
7 Amounts in the Trust Fund shall be available for obliga-
8 tion without fiscal year limitation.

9 **TITLE VII—APPLICABILITY;** 10 **PENDING CIVIL ACTIONS**

11 **SEC. 701. APPLICABILITY.**

12 Subject to section 702, beginning on the date of en-
13 actment of this Act, this Act shall apply to any civil action
14 asserting an asbestos claim that has not resulted in a
15 final, nonappealable judgment.

16 **SEC. 702. PENDING CIVIL ACTIONS.**

17 (a) IN GENERAL.—

18 (1) CERTIFICATES OF MEDICAL ELIGIBILITY.—

19 A certificate of medical eligibility shall not be re-
20 quired in any civil action asserting an asbestos claim
21 if—

22 (A) that action was pending on the date of
23 enactment of this Act; and

24 (B) a trial commences prior to the oper-
25 ational date. No release from mediation shall be

1 required in any civil action asserting an asbes-
 2 tos claim if the action was pending on the date
 3 of enactment, whether or not trial commences
 4 prior to the operational date.

5 (b) ELECTIONS.—Prior to the operational date, a
 6 plaintiff in a civil action asserting an asbestos claim that
 7 is pending on the date of enactment may elect to submit
 8 that claim to the Corporation for a determination of medi-
 9 cal eligibility. Any such election shall be irrevocable.

10 (c) BURDEN OF PROOF.—Notwithstanding any other
 11 provision of law, the plaintiff in any civil action asserting
 12 an asbestos claim who has not obtained a certificate of
 13 medical eligibility shall have the burden of establishing the
 14 existence of an asbestos-related condition that meets the
 15 criteria for an eligible medical category pursuant to sec-
 16 tions 201 through 204.

17 **TITLE VIII—MISCELLANEOUS** 18 **PROVISIONS**

19 **SEC. 801. APPLICABILITY OF OTHER FEDERAL LAWS.**

20 (a) IN GENERAL—Nothing in this Act shall be con-
 21 strued to make any director, officer, or employee of the
 22 Corporation, an officer or employee of the Federal Govern-
 23 ment for purposes of title 5, United States Code. Neither
 24 the Corporation nor any director, officer, or employee of

1 the Corporation shall be subject to section 1341(a) of title
2 31, United States Code.

3 (b) APPLICABILITY OF CERTAIN ADMINISTRATIVE
4 PROVISIONS.—To the extent consistent with the provisions
5 of this Act, the Corporation shall be subject to the require-
6 ments of sections 552a, 553, 555, and 706 of title 5,
7 United States Code.

8 (c) DISCLOSURE OF INFORMATION.—In order to pre-
9 serve the integrity of the settlement process in the resolu-
10 tion of asbestos claims, the Corporation shall exempt from
11 disclosure under section 552(b)(3) of title 5, United States
12 Code, with respect to information or documents that con-
13 tain the results of settlements or settlement averages, indi-
14 vidual party or attorney names, medical records, and relat-
15 ed data collected for the purpose of resolving individual
16 claims.

17 (d) EXEMPTIONS.—The Corporation shall be exempt
18 from the requirements of the following provisions of law:

19 (1) Sections 504 and 552b of title 5, United
20 States Code.

21 (2) Chapter 51 of title 5, United States Code.

22 (3) Chapter 53 of title 5, United States Code.

23 (4) The Ethics in Government Act (5 U.S.C.
24 App.).

1 (5) Sections 2412 and 2672 of title 28, United
2 States Code.

3 (6) Title III of the Federal Property and Ad-
4 ministrative Services Act of 1949 (41 U.S.C. 251 et
5 seq.).

6 (7) Chapter 35 of title 44, United States Code.

7 **SEC. 802. OBLIGATIONS OF THE CORPORATION NOT OBLI-**
8 **GATIONS OF THE UNITED STATES.**

9 Obligations or liabilities of the Corporation shall not
10 be obligations or liabilities of the United States. No action
11 may be maintained against the United States to enforce
12 any obligation or liability of the Corporation.

13 **SEC. 803. APPLICATION TO EXISTING ASBESTOS TRUSTS.**

14 (a) IN GENERAL.—This Act shall not apply to any
15 asbestos trust in existence as of the date of enactment of
16 this Act, except as provided in subsection (b).

17 (b) ELECTION.—An asbestos trust may elect to be
18 subject to the Act by providing written notice of such elec-
19 tion to the Corporation, in which case the trust will have
20 the same rights and responsibilities under the Act as any
21 person who is not a trust. A valid election under this sub-
22 section shall be irrevocable.

23 **SEC. 804. SEVERABILITY.**

24 If any provision of this Act or the application of such
25 provision to any person or circumstance is held invalid,

- 1 it is the intent of Congress that the remainder of this Act
- 2 and application of such provision to other persons or cir-
- 3 cumstances shall not be affected thereby.

